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Does Patient Consent Shield Doctors from Liability? A Critical Analysis of Medical Negligence under Indian Law

MELVINA MARTIN

INTRODUCTION

¹The relationship between the doctor and patient in ancient times was built on trust. However, as consumerism increased in the present time, the relationship between the doctor and patient became more legal in nature. Consent given by the patient to the medical practitioner is considered important and necessary for any medical consultation provided or any surgical procedure needed. ²In 2017, a study was conducted by the Indian Medical Association where 25% of the doctors were in fear of being sued due to medical negligence and around 14% of the doctors were in fear of criminal prosecution. Consent given by the patient for any medical procedure can serve as a shield for doctors if a legal action is filed against them. However, in some cases, consent does not fully protect doctors from medical negligence, which would be discussed later in this article.

MEDICAL NEGLIGENCE IN INDIAN LAW

In India, Medical Negligence is an important issue as there is a conflict between the rights of a patient and the responsibility of a doctor. Under ³Article 21 of the Indian Constitution, the person has the right to life and bodily autonomy, and if any harm is caused due to the negligent act of the medical practitioner (doctor), the person can file a complaint against the doctor and claim compensation due to the injury or harm caused.

¹ Dr. Rahul Katiyar, *MEDICAL NEGLIGENCE IN CONTEMPORARY INDIA: LEGAL LIABILITY, PATIENT RIGHTS AND EMERGING ACCOUNTABILITY UNDER THE CONSUMER PROTECTION ACT, 2019 AND BHARATIYA NYAYA SANHITA*, 2023, 7 IJMRT 33,33 (2026)

² Alok Kumar Singh & Mrityunjay Kumar Rai, *What Is Medical Negligence? – A Critical Appraisal*, 4 Med. India 37 (2025)

³ INDIA CONST. art.21

⁴Medical Negligence happens when there is a duty of care given to the patient by the medical practitioner who is an expert in the medical field, and there is a breach of duty of care due to non-fulfilment of the standard of care provided and due to which there is harm, damage or injury caused to the patient because of the medical practitioner's careless behaviour or negligent act. Three important things must be proved for medical negligence, and they are:

1. DUTY OF CARE- there must be a duty of care provided to the patient by the doctor who has the requisite knowledge about the medical field and is a medical expert.
2. BREACH OF DUTY OF CARE- There was a breach of duty of care due to the negligent or reckless act of the medical practitioner.
3. DAMAGE OR INJURY CAUSED- Due to the breach of duty of care because of the negligent or reckless act of the medical practitioner, there was damage, harm, or injury caused to the patient.

Three of them should be proved for claiming medical negligence. That is, it must be proved before the judges by the complainant to claim compensation for medical negligence that the doctor had a duty of care towards him/her and that there was a breach of duty due to the negligent or reckless behaviour of the doctor, which resulted in harm or injury to him/her. ⁵In India, the complainant has the burden of proof in medical negligence cases.

⁶In India, various legal sources regulate medical negligence, such as tort law, civil law, criminal law and consumer law. The concept of medical negligence in India has evolved through legislation like the Consumer Protection Act 2019 and Bharatiya Nyaya Sanhita 2023, which came into effect in replace of the Indian Penal Code, 1860.

In the **Consumer Protection Act, 2019**, medical negligence is incorporated under Section 2(42), which defines services and under Section 2(11), which defines deficiency,

⁷2(42) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy,

⁴ AMRITA DAS, *CONSENT AND LEGAL FRAMEWORK CONCERNING MEDICAL NEGLIGENCE CASES IN INDIA: A CRITICAL ANALYSIS AND NEED FOR COMPREHENSIVE REFORM*, 4 IJLR 593,594 (2024)

⁵ Alok Kumar Singh & Mrityunjay Kumar Rai, *What Is Medical Negligence? – A Critical Appraisal*, 4 Med. India (2025)

⁶ Dr. Rahul Katiyar, *MEDICAL NEGLIGENCE IN CONTEMPORARY INDIA: LEGAL LIABILITY, PATIENT RIGHTS AND EMERGING ACCOUNTABILITY UNDER THE CONSUMER PROTECTION ACT, 2019 AND BHARATIYA NYAYA SANHITA, 2023*, 7 IJMRT 33,33 (2026)

⁷ Consumer Protection Act, No. 35 of 2019, § 2(42), India

telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

⁸2(11) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and*
- (ii) deliberate withholding of relevant information by such person to the consumer*

⁹There is a wider concept incorporated in Section 2(42) of the Consumer Protection Act, 2019, where health care services provided by hospitals, clinics and medical practitioners are included in the concept of service. If the patient feels any deficiency in the services provided by the health care services, they can directly file a complaint before the Consumer Disputes Redressal Commission (District, State, and National Commission). ¹⁰In the ¹¹**Indian Medical Association v. V.P. Shantha** case, the term medical services was incorporated in the Consumer Protection Act 2019, which allowed patients to make complaints if any poor service is provided by the health care services.

In the **Bharatiya Naya Sanhita, 2023**, criminal medical negligence is incorporated under Section 106(1) where there is causation of death due to the negligent act or behaviour of the medical practitioner,

¹²106. (1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be

⁸ Consumer Protection Act, No. 35 of 2019, § 2(11), India

⁹ Dr. Rahul Katiyar, *MEDICAL NEGLIGENCE IN CONTEMPORARY INDIA: LEGAL LIABILITY, PATIENT RIGHTS AND EMERGING ACCOUNTABILITY UNDER THE CONSUMER PROTECTION ACT, 2019 AND BHARATIYA NYAYA SANHITA, 2023*, 7 IJMRT 33,34 (2026)

¹⁰ AMRITA DAS, *CONSENT AND LEGAL FRAMEWORK CONCERNING MEDICAL NEGLIGENCE CASES IN INDIA: A CRITICAL ANALYSIS AND NEED FOR COMPREHENSIVE REFORM*, 4 IJLR 593,594 (2024)

¹¹ Indian Medical Association v. V.P. Santha and others, (1995) SCC (6) 651

¹² Bharatiya Nyaya Sanhita, No. 45 of 2023, § 106(1), India

punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Explanation.— For the purposes of this sub-section, “registered medical practitioner” means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

¹³The medical practitioners or experts can be held liable for criminal negligence if there was a guilty act done by the medical practitioner due to negligent behaviour and which led to the death or severe injury of the patient. The medical practitioner under criminal medical negligence would be liable to a fine and would be imprisoned for a term which may extend to five years.

WHAT IS CONSENT IN MEDICAL TREATMENT

Consent means when two different people agree on the same thing in the same sense. Consent is defined under Section 13 of the Indian Contract Act, 1872, where,

¹⁴13. “Consent” defined.—Two or more persons are said to consent when they agree upon the same thing in the same sense.

¹⁵In a doctor and patient relationship, consent means when the patient agrees to follow the medical or surgical procedure provided by the medical practitioner. If the medical practitioner operates on the patient without valid consent provided by the patient or by the family members if the patient is not capable of giving consent, then they would be legally held liable.

¹⁶In medical treatment, informed consent by the patient is important and necessary for the medical practitioner to carry forward the medical procedure. The essential key elements for informed consent in medical treatment are that the full information should be disclosed by the

¹³ Dr. Rahul Katiyar, *MEDICAL NEGLIGENCE IN CONTEMPORARY INDIA: LEGAL LIABILITY, PATIENT RIGHTS AND EMERGING ACCOUNTABILITY UNDER THE CONSUMER PROTECTION ACT, 2019 AND BHARATIYA NYAYA SANHITA*, 2023, 7 IJMRT 33,34 (2026)

¹⁴ Indian Contract Act, No. 9 of 1872, § 13, India

¹⁵ Shubhavi Malhotra, *Role of Consent in Medical Negligence*, II INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS 5, 6 (2025)

¹⁶ Alex Renton, *How informed consent prevents medical negligence*, ENABLELAW (January 21, 2025) <https://www.enablelaw.com/news-and-insights/how-informed-consent-prevents-medical-negligence/>

medical practitioners regarding the medical treatment, by also disclosing factors like its risks, benefits, alternatives available and the success level after the treatment. When medical practitioners are providing the information, they have to make sure that the information given is understandable in nature so that patients who do not have medical knowledge can understand the process of treatment in layman's terms. The consent given by the patient should be voluntary in nature and should not be obtained through coercion or undue influence, where the patient is forced to give consent as they have less knowledge regarding the medical treatment. There should be proper documentation of the informed consent given by the patient for the further process of medical treatment.

¹⁷The Supreme Court of India in the case ¹⁸**Samira Kholi v. Dr. Prabha Manchanda** stressed the importance of informed consent given by the patient. The court held that before undergoing medical treatment, the patients should be fully informed about the risks, alternatives and advantages of the medical operations.

¹⁹Consent by the patients can be given to the medical practitioners in the following ways:

1. Implied or Expressed Consent- Implied consent means when consent is implied by the patient's conduct during the doctor's consultation in the clinic or chamber, or when the patient follows the doctor's instructions or orders. Express consent can be either oral or in writing. Express consent is taken by the doctor from the patient when there is a requirement for any procedure, treatment or surgery.
2. Proxy/Surrogate Consent- When the family members of the patient or any legal person authorized by the patient or appointed by the court gives consent on their behalf, as the patient does not have the full legal capacity to give consent.

Consent of the patient plays an important role in medical treatment, as without the voluntary and valid consent of the patient, the doctor cannot medically operate on the patient. And if the doctor or any medical practitioner operates on the patient without valid consent, then they would be held liable under tort, civil or criminal law.

¹⁷ AMRITA DAS, *CONSENT AND LEGAL FRAMEWORK CONCERNING MEDICAL NEGLIGENCE CASES IN INDIA: A CRITICAL ANALYSIS AND NEED FOR COMPREHENSIVE REFORM*, 4 IJLR 593,594 (2024)

¹⁸ 2008 (2) AIR BOM R 354

¹⁹ Ishita Sahai, *CONSENT IN MEDICAL NEGLIGENCE: LEGAL CONSEQUENCES OF UNAUTHORISED PROCEDURES AND GHOST SURGERIES*, 4 JLRJS 603,604 (2025)

DOES CONSENT PROTECT OR SHIELD DOCTORS FROM LIABILITY

Consent given by the patient for any medical procedure can serve as a shield for doctors if a legal action is filed against them. However, in some cases, consent does not fully protect doctors from medical negligence.

1. Even when consent is given by the patient, the medical practitioner or the doctor would be held liable if reasonable care is not provided or there is a negligent or reckless act committed due to which there is damage or injury caused to the patient.

²⁰ The court sometimes uses the Latin term *Res Ipsa Loquitur*, which means the thing speaks for itself. The court uses this term when the facts are enough to declare negligence on behalf of the medical practitioner; for instance, any surgical equipment is left inside the body of the patient during the surgery process or any act which is reckless in nature where such an act is not expected by a medical practitioner to perform as they have the requisite knowledge and expertise in the medical domain.

²¹The National Consumer Dispute Redressal Commission applied the principle *Res Ipsa Loquitur* (things speak for themselves) in a case, ²²**Spring Meadows Hospital v. Harjol Ahluwalia**, where a nurse administered the wrong injection which resulted in the brain damage of the child.

2. ²³Unauthorised extra surgical Action

It refers to a situation when a surgeon performs any additional procedure or performs an entirely different procedure without obtaining the explicit consent of the patient. In such a situation, the patient can file a complaint against the medical practitioner to claim compensation even if the surgery was successful or unsuccessful, as there was no explicit consent given by the patient. A fresh consent should be taken for any repeat or extra or additional procedure.

The court in the case **Ram Bihari Lal v. Dr. J. N. Srivastava**²⁴ held the doctor liable for performing extra procedures without informing the patient and without taking consent from the patient.

²⁰ AMRITA DAS, *CONSENT AND LEGAL FRAMEWORK CONCERNING MEDICAL NEGLIGENCE CASES IN INDIA: A CRITICAL ANALYSIS AND NEED FOR COMPREHENSIVE REFORM*, 4 IJLR 593,598 (2024)

²¹ Dr. Namit, *What is Res Ipsa Loquitur in Medical Negligence Cases in India?*, Medico Legal Services (January 10, 2025)

<https://www.medicolegalservices.in/res-ipsa-loquitur-medical-negligence-india/>

²² *Spring Meadows Hospital v. Harjol Ahluwalia*, (1998) 4 SCC 39

²³ Ishita Sahai, *CONSENT IN MEDICAL NEGLIGENCE: LEGAL CONSEQUENCES OF UNAUTHORISED PROCEDURES AND GHOST SURGERIES*, 4 JLRJS 603,613 (2025)

²⁴ *Ram Bihari Lal v Dr JN Srivastava*, AIR 1985 MP 150

3. Consent taken from the person who does not have the legal capacity

If consent is taken from a person who does not have legal capacity, such the minors or a person who is mentally incapable of making a reasonable decision, then the medical practitioner or doctor would be held liable, as their consent is not considered legally valid according to the Indian Contract Act, 1872.

4. ²⁵Proxy or Surrogate consent

Proxy or surrogate consent refers to when the family members of the patient or any legal person authorized by the patient or appointed by the court gives consent on their behalf, as the patient does not have the full legal capacity to give consent. However, the consent should be given in the best interests of the patient, and if any consent which is not in the patient's best interests is given by the family member or the legal person authorized to give consent, the court can declare the consent as invalid and hold the medical practitioner liable if the case is brought before the court.

The Supreme Court of India in **Aarushi Dhasmana v. Union of India**²⁶ stated that the parents have the right to consent on behalf of their children. However, if a case is brought before the court showing that the parents' decision would result in harm or neglect, then the court can decide on behalf of the child and negate the consent given by the parent.

5. ²⁷Ghost Surgery

Ghost surgery refers to where a surgeon performs the surgery procedure instead of the original surgeon to whom the consent was given to perform the procedure.

Ghost surgery is not defined medically or legally. However, it is one of the ethical issues that has to be looked at, as the patient does not have the important information regarding surgery, as the consent is not taken from them, which neglects the ability of patients to give informed consent.

CONCLUSION

In the doctor-patient relationship, consent plays an important role. In legal terms, informed consent of the patient should be obtained by the medical practitioners before conducting any surgery or treatment. If the medical practitioners conduct the medical treatment without the

²⁵ Ishita Sahai, *CONSENT IN MEDICAL NEGLIGENCE: LEGAL CONSEQUENCES OF UNAUTHORISED PROCEDURES AND GHOST SURGERIES*, 4 JLRJS 603,615 (2025)

²⁶ Aarushi Dhasmana v Union of India, (2013) 9 SCC 475

²⁷ Ishita Sahai, *CONSENT IN MEDICAL NEGLIGENCE: LEGAL CONSEQUENCES OF UNAUTHORISED PROCEDURES AND GHOST SURGERIES*, 4 JLRJS 603,620 (2025)

consent given by the patient in an expressed or implied way, then they can be held liable for civil negligence or criminal negligence if there is causation of death due to the negligent act or behaviour of the medical practitioner. The patient can claim compensation if proved before the court that the doctor or a medical practitioner had a duty of care towards him/her and there was a breach of that duty due to which there was damage or harm or injury caused to him/her. Consent given by the patient for any medical procedure can serve as a shield for doctors if a legal action is filed against them. However, in some cases, consent does not fully protect doctors from medical negligence when the doctors do not provide reasonable care, consent is taken by a person who is not capable of giving consent according to Section 13 of the Indian Contract Act, when consent is taken during the course of surgery, proxy or surrogate consent is taken which does not benefit the patient, or when there is ghost surgery conducted where a surgeon performs the surgery procedure instead of the original surgeon to whom the consent was given to perform the procedure.